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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,373	03/12/2004	Chantal Amalric	0503-1116	7300
466 7590 04/19/2007 YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER EGWIM, KELECHI CHIDI	
			ART UNIT 1713	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/19/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/799,373

Applicant(s)

AMALRIC ET AL.

Examiner

Dr. Kelechi C. Egwim

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-44 is/are pending in the application.
- 4a) Of the above claim(s) 18-26, 41 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-40, 42 and 44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. This application contains claims 18-26, 41 and 43, drawn to inventions nonelected with traverse in Paper No. 053006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

2. Due to amendments and persuasive arguments by applicant, the previous rejections of record based on Afriat et al. or Lorant, have been overcome and are hereby withdrawn.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 27-40, 42 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Lahanas et al., Vesperini et al. or Kellner et al.

Response to Arguments

5. Applicant's arguments filed 01/29/2007 have been fully considered but they are not persuasive.
6. Regarding Lahanas et al., applicant argues that the reference "fails to disclose adding a fatty phase to a gelled aqueous phase" and that Lahanas et al. teaches an oil phase, comprising oil and a perfluoropolyether, to be added to water-in-silicon emulsion. However, the water-in-silicon emulsion comprises the gelled aqueous phase required in the claims. Thus, by adding the fatty phase, comprising the oil and the perfluoropolyether, to the water-in-silicon emulsion, comprising the gelled aqueous phase, the limitations of the presently claimed process are met.
7. Applicant also argues that Lahanas et al. "fails to disclose the recited amount of gelled aqueous phase (i.e. about 60% up to about 98%), as LAHANAS discloses the gelled phase is 35-55%". However, the teach of 55% gelled aqueous phase in the composition of Lahanas et al. meets the presently claimed "about 60%" of said gelled phase.
8. Finally, applicant argues that Lahanas et al. "fails to disclose forming a water-in-oil emulsion from the fatty phase and the gelled aqueous phase (i.e. as recited in claim 44), as LAHANAS is directed to multi-phase compositions". However, as pointed out by applicant, when the oil/fatty phase is added, a multi-phase composition is formed, which

Art Unit: 1713

comprises “a fatty external phase and a gelled aqueous phase”. The presence of any other phases is not excluded from the scope of the present claims.

9. Regarding Vesperini et al., applicant argues that the reference teaches “a continuous gelled aqueous external phase”. However, the present claims do not define the gelled aqueous phase as being exclude from an external phase. The claim only requires the presence of the gelled aqueous phase and that it be added to an external oil phase. Vesperini et al. happens to teach the oil phase as being external to another aqueous phase. Applicant’s claims do not require the gelled aqueous phase to be dispersed within the external oil phase, only that it be mixed together with the external oil phase to form the composition.

10. Regarding Kellner et al., applicant argues that, while the reference discloses water-in-oil emulsions, the only exemplified embodiment is an oil-in-water emulsion. However, it is well settled that anticipatory teachings are not limited to any particular embodiment/example. In re Boe, 148 USPQ 507 (CCPA 1966). Disclosed examples and preferred embodiments (even if the embodiments tested by appellant were preferred) do not constitute a teaching away from a broader disclosure. In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). The claimed process is still taught by Kellner et al., even if not exemplified.

Art Unit: 1713

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kelechi C. Egwim whose telephone number is (571) 272-1099. The examiner can normally be reached on M-T (7:30-6:00).

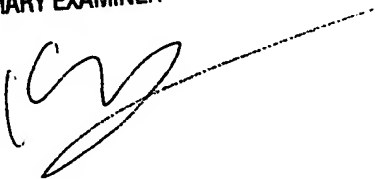
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1713

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KELECHI C. EGWIM PH.D
PRIMARY EXAMINER

KCE

A handwritten signature in black ink, appearing to be 'KCE' or a stylized version of the name, written over a horizontal line.